

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

---

UNITED STATES OF AMERICA

Plaintiff,

v.

AK STEEL CORPORATION

Defendant.

---

Civil Action No.

**1:05CV1004**

**JUDGE NUGENT**

CONSENT DECREE

MAG. JUDGE HEMANN

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**CONSENT DECREE**

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed, simultaneously with this Consent Decree, a civil Complaint against Defendant, AK Steel Corporation ("Defendant" or "AK Steel"), in this matter which alleges that Defendant violated the Clean Water Act, as amended, 33 U.S.C. §§ 1251 - 1387 ("CWA"), at its plant located at 913 Bowman Street, Mansfield, Richland County, Ohio ("Facility");

WHEREAS, the EPA has worked jointly with AK Steel to resolve the violations alleged in the Complaint;

WHEREAS, pursuant to the authorities of Section 309(b) of the CWA, 33 U.S.C. § 1319(b), the Complaint seeks the imposition of civil penalties and injunctive relief for alleged violations of the CWA;

WHEREAS, in furtherance of both judicial efficiency and the public interest, the parties hereto have agreed to enter into a Consent Decree to resolve the violations alleged in the Complaint; and

WHEREAS, the parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the parties in good faith and will avoid prolonged and complicated litigation among the parties; and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before taking any testimony; upon the pleadings; without adjudication of any issue of fact or law; without this Consent Decree constituting any evidence, waiver or admission of fact, violation or liability by any party; and with the consent of the parties, it is hereby ORDERED and DECREED as follows:

#### I. JURISDICTION AND VENUE

1. Jurisdiction is vested in this Court pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d) and 28 U.S.C. §§ 1331, 1345, and 1355.
2. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1355 and 1391(b) and (c) and 1395(a), because AK Steel conducts business in this district and operates a facility in this district, and because the violations alleged in the Complaint are alleged to have occurred in this district. For purposes of this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

#### II. PARTIES BOUND

3. The provisions of this Consent Decree shall apply to and be binding upon Plaintiff and upon Defendant, including Defendant's officers, directors, employees, agents, servants,

and successors and assigns, and all persons, firms, entities and corporations acting under, through or for it or in active concert or participation with it. Defendant shall be responsible for the acts of any of its officers, directors, employees, agents, servants, successors, assigns, contractors, and consultants, which violate or cause Defendant to violate the terms hereof.

4. The undersigned representative(s) of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice each certifies that he or she is fully authorized to execute this Consent Decree and to legally bind the party whom he or she represents to this Consent Decree.
5. No change in ownership or corporate status shall in any way alter Defendant's responsibilities under this Consent Decree. In the event of any conveyance of title, easement, or other interest in the Facility (as defined in Section III of this Consent Decree), all of Defendant's obligations under this Consent Decree shall continue to be met by Defendant.
6. In the event that Defendant proposes to sell or transfer the real property or operations subject to this Consent Decree, Defendant shall give written notification to EPA and the United States Department of Justice, in accordance with Section IV of this Consent Decree (Submission of Documents), of such purchaser or transferee in interest at least thirty (30) days prior to the sale or transfer. At least thirty (30) days prior to any such conveyance, Defendant shall also provide a copy of this Consent Decree to any person or entity to whom Defendant intends to make such conveyance, and shall condition such sale or transfer upon agreement by the purchaser or transferee to submit to the jurisdiction of this Court and to be subject to the obligations of the Defendant under this

Consent Decree, as specified in a written agreement between Defendant and the purchaser or transferee, enforceable by the United States as third party beneficiary. Any attempt to transfer ownership or operation of the Facility without complying with this paragraph constitutes a violation of this Consent Decree. Any transfer of ownership or operation of the Facility without complying with this paragraph constitutes a violation of this Consent Decree.

### III. DEFINITIONS

7. Unless otherwise stated, terms used in this Consent Decree shall have the meaning given to those terms in the CWA and its implementing regulations.
8. “Complaint” means the complaint filed by the United States in this action simultaneously with the lodging of this Consent Decree.
9. “Consent Decree” means this Consent Decree and any modifications subsequently made pursuant to Paragraph 31 of this Consent Decree.
10. “Day” as used in this Consent Decree shall mean calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day. “Working Day” means a day other than a Saturday, Sunday, or Federal holiday.
11. “Defendant” means AK Steel Corporation.
12. “DOJ” means the United States Department of Justice and any successor departments or agencies of the United States.
13. “EPA” means the United States Environmental Protection Agency and any successor agencies or departments.
14. “Facility” means the steel production facility owned and/or operated by Defendant and

located at 913 Bowman Street, Mansfield, Ohio.

15. "Interest" means interest calculated at the rate established by the Secretary of the Treasury pursuant to 28 U.S.C. § 1961.
16. "Parties" means the United States and AK Steel Corporation.
17. "Plaintiff" means the United States of America, on behalf of EPA.

#### IV. SUBMISSION OF DOCUMENTS

18. Unless and until written notice to the contrary is provided to Defendant, all notifications, reports and information required by this Consent Decree to be submitted shall be submitted to:

Terence Branigan  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

with copies submitted simultaneously to:

Chief  
Water Enforcement and Compliance Assurance Branch  
Water Division  
United States Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

and

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
DOJ # 90-7-1-07677

19. Any and all notifications, reports, and information required by this Consent Decree to be submitted, as to Defendant, shall be submitted to:

Carl H. Batliner  
AK Steel Corporation  
703 Curtis Street  
Middletown, OH 45043

and

David C. Horn, Esq.  
AK Steel Corporation  
703 Curtis Street  
Middletown, OH 45043

20. Notifications, reports or other documents submitted by Defendant to EPA and the United States shall be deemed submitted on the date they are either: (1) postmarked and sent by certified mail, return receipt requested; (2) sent by facsimile transmission, with confirmation of receipt; or (3) sent by overnight delivery service.
21. Defendant shall give notice to EPA in the event that discharges of process wastewater from the pickle line or from the cold mill/tandem mill at the Facility to the City of Mansfield Wastewater Treatment Plant are resumed prior to the termination of this Consent Decree. Notice shall be given within 60 days after the resumption of such discharges to Terence Branigan, Associate Regional Counsel, U.S. EPA Region 5, and to the Chief, Water Enforcement and Compliance Assurance Branch, Water Division, U.S. EPA Region 5, as specified in this Section IV of the decree.

#### V. CIVIL PENALTY

22. Within sixty (60) calendar days after the entry of this Consent Decree as determined by Paragraph 35 Defendant shall pay a total civil penalty of \$187,500.00 ("Civil Penalty") in



settlement of the civil violations alleged by the United States in its Complaint.

Defendant shall pay the United States the Civil Penalty payment and payments under Paragraph 24, if any, by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice lockbox bank, referencing the civil action number, DOJ case number (90-7-1-07677). Payment shall be made in accordance with the EFT instructions provided by the U.S. Attorney's Office of the Northern District of Ohio. Any EFT received at the United States Department of Justice lockbox after 3:00 p.m. (Eastern Time) will be credited on the next business day. Defendant shall simultaneously deliver copies of its EFT transmittal notice to "Docket Clerk (3RC00), Region V, U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590"; and to "Chief, Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, Attn: DOJ No. 90-7-1-07677," and to Terence Branigan and the Chief, Water Enforcement and Compliance Assurance Branch, as specified in Section IV above.

23. Any payment made pursuant to Paragraph 22 of this Consent Decree is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and is not a tax deductible expenditure for purposes of federal, state, or local law. Neither Defendant nor any of its parent or affiliated corporations shall deduct Defendant's payment of the Civil Penalty provided for herein for any tax purpose or otherwise obtain favorable tax treatment of such Civil Penalty payment.
24. If Defendant fails to make timely payment of the Civil Penalty as set forth in this Section V, it shall be liable for interest and penalties for late payment as follows: (a) interest on

the unpaid balance at the percentage rate established by the Department of Treasury pursuant to 28 U.S.C. § 1961 (as of the due date), for any period after the due date; (b) a six percent per annum late fee assessed monthly on any portion of the penalty, including interest, which is more than ninety (90) days delinquent; (c) a penalty charge of \$5,000 per day for each day after the due date that the Civil Penalty is not paid to the United States; and (d) administrative costs of collecting the penalty calculated in accordance with 40 C.F.R. § 13.11(b) and assessed monthly throughout the period the penalty is overdue.

## VI. GENERAL PROVISIONS

25. Nothing in this Consent Decree shall relieve Defendant of its obligation to comply with all applicable provisions of federal, state or local law. After exercising due diligence and conducting appropriate inquiries, Defendant certifies that, to its knowledge, as of the date of its execution of this decree, the Facility is in compliance with the specific requirements of the CWA that are alleged in the Complaint to have been violated.
26. Except as provided in Paragraph 29 (Covenant Not To Sue), nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the rights of the Plaintiff to seek additional remedies or sanctions, pursuant to other provisions of this Consent Decree or of any applicable statutes and regulations.
27. Non-Waiver. The Plaintiff does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will constitute or result in compliance with the provisions of the CWA, or implementing regulations, or under other federal or state laws, regulations, or permit

conditions, except as expressly specified in this Consent Decree. Except as expressly provided in Paragraph 29 of this Consent Decree (Covenant Not To Sue), the parties agree that compliance with this Consent Decree shall not be a defense to any actions commenced pursuant to such laws or regulations.

28. Reservation of Rights. Except as expressly provided in Paragraph 29 of this Consent Decree (Covenant Not To Sue), the entry of this Consent Decree shall not limit or otherwise preclude the Plaintiff from taking criminal or additional civil judicial or administrative enforcement action against Defendant or any third parties with regard to the Facility pursuant to any federal or state law, including, but not limited to, the CWA, and any regulation or permit condition promulgated thereunder. This Consent Decree is neither a permit nor a modification of any existing permit under any federal, state or local laws or regulations, and shall not be interpreted to be such. This Consent Decree does not limit or affect the rights of Defendant or the Plaintiff, as against any third party, nor does it limit the rights of such third parties against Defendant. This Consent Decree shall not constitute an admission by Defendant of, or adjudication of, any issue of fact or law relating to the claims of the United States, with the exception of those relating to venue and the jurisdiction of the Court.
29. Covenant Not to Sue. Upon payment by Defendant of the Civil Penalty and interest, late fees and other penalties, if any, as provided in Paragraphs 22 and 24 of this Consent Decree, the Plaintiff covenants not to take civil judicial or administrative action against Defendant seeking civil penalties pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), for the specific claims, all of which precede the date of lodging, alleged in the

Complaint filed by the Plaintiff in this action. Provided, however, that nothing herein shall preclude the Plaintiff from taking any action necessary to prevent or abate any condition which presents an imminent and substantial endangerment to the public health or welfare, or the environment.

30. Costs. The parties to this Consent Decree shall bear their own costs of litigation in this civil action, including, but not limited to, attorney and expert witness fees. This Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection in accordance with Federal Rule of Civil Procedure 69 and the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308. Notwithstanding the above, if Defendant fails to pay an amount that is owing to the United States pursuant to the requirements of this Decree within the time periods set forth in this Consent Decree, Defendant shall be liable and shall pay for attorneys fees and costs incurred by the United States to collect any such amount.
31. Modifications. No modifications shall be made to this Consent Decree without written agreement of all parties and written approval of the Court. Nothing in this Section shall be deemed to alter the Court's power to supervise or modify this Consent Decree.
32. Retention of Jurisdiction. The Court shall retain jurisdiction of this matter until termination of the Consent Decree. The Plaintiff retains the right to seek to enforce the terms of this Consent Decree and take any other action authorized by federal, state or local law to achieve or maintain compliance with this Consent Decree.
33. Nothing herein shall be construed to limit in any way the authority of the United States to pursue criminal sanctions.

34. Entire Agreement. This Consent Decree exhibits represents the entire agreement among the parties. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree.

VII. EFFECTIVE DATE AND TERMINATION

35. This Consent Decree shall be effective upon the date of its entry by the Court.
36. This Consent Decree shall terminate on the later of the following days: (i) one year after the date of entry, or (ii) the date that Defendant has completed and complied with all requirements of this Consent Decree, including but not limited to, the payment of the Civil Penalty plus accrued interest, any late fees and other penalties required by Section V of this Consent Decree, and the notifications required by Paragraph 21 of this Consent Decree.

VIII. PUBLIC COMMENT

37. Final approval of this Consent Decree by the United States will be consistent with the public notice and comment requirements of 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the public comments establish that entry of this Consent Decree would be inappropriate, improper or inadequate. After reviewing the public comments, if any, the United States shall advise the Court and Defendant by motion whether it seeks entry of this Consent Decree. Defendant agrees to the entry of this Consent Decree without further notice.

38. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a Final Judgment of the Court as to the United States and Defendant.

Judgment is hereby entered in accordance with the foregoing Consent Decree this

\_\_\_\_\_ day of \_\_\_\_\_ 2005.

SO ORDERED.

\_\_\_\_\_  
United States District Judge

FOR PLAINTIFF UNITED STATES OF AMERICA:

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W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: 4/8/05

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CATHERINE BANERJEE ROJKO  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
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E-mail: [Cathy.Rojko@usdoj.gov](mailto:Cathy.Rojko@usdoj.gov)


Date: 4/18/05

GREGORY A. WHITE  
United States Attorney  
United States Attorney's Office  
for the Northern District of Ohio

~~JAMES L. BICKETT~~ Reg. No. 0005598  
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2 South Main Street, #208  
Akron, OH 44308  
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E-Mail: James.Bickett@usdoj.gov



Date: 4/15/05

 BHARAT MATHUR  
Acting Regional Administrator, Region V  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590


Date: March 31, 2005

BERTRAM C. FREY  
Acting Regional Counsel, Region V  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Date: 3-30-05

TERENCE BRANIGAN  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

FOR AK STEEL CORPORATION:

  
\_\_\_\_\_  
DAVID C. HORN

Senior Vice President, General Counsel  
and Secretary  
AK Steel Corporation  
703 Curtis Street  
Middletown, OH 45043

Date: 2/15/05

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APR 19 2005

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CLERK OF COURTS  
U.S. DISTRICT COURT, N.D.O.  
AKRON